IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10390 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

WELSPUN INDIA LTD

Versus

STATE OF GUJARAT

Appearance:

MR MIHIR H JOSHI for Petitioners

R.C. Bodekar, Asstt.GOVERNMENT PLEADER for Respondent No. 1, 2

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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 29/11/2000

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

Rule. Mr. K. C. Kodekar, learned AGP appears on behalf of the State of Gujarat and waives service of Rule. With the consent of parties, Rule is heard today.

1. The petitioner who is a `dealer' within the definition of the Gujarat Sales Tax Act, 1969, has approached this court being aggrieved by the notice of demand at Annexure `E' issued in form 34 under Rule 33 of the Gujarat Sales Tax Rules, 1970, calling upon him to pay sales tax dues amounting to Rs. 1,90,57, 116/-.

2. The case of the petitioner is that he has established Terry Towels unit under the incentive scheme announced by the Government of Gujarat containing sales tax exemption/ deferment of payment of tax. According to the department, the petitioner failed to obtain separate registration of his second unit in terms of condition No. 9 of the incentive scheme and,therefore, a demand notice has rightly been issued to the petitioner for payment of sales tax dues as per the return submitted by him for the relevant assessment year.

3. Learned counsel appearing for the petitioner states that the petitioner has already preferred an appeal against the revisional order of the Commissioner of Sales tax and has prayed before the appellate authority that for availing benefit of exemption/ deferment scheme, it was not necessary for him to obtain separate registration for the second unit. Learned counsel submits that even where there was alleged

nonfulfilment of one of the conditions of the exemption/ deferment incentive scheme, no notice straightaway for payment of sales tax dues on the basis of the return could have been issued under section 40 of the Act read with Rule 33 of the Rules. Learned counsel for the petitioner submits that in the return, the petitioner had shown his tax liability as `Nil'.

4. We have heard learned AGP appearing for the sales tax department.

5. In our considered opinion, where liability towards tax dues is sought to be raised on the basis of alleged nonfulfilment of one of the conditions of the exemption/ deferment incentive scheme, before issuing a demand notice, it was necessary for the assessing officer to grant an opportunity of hearing to the dealer more so when the dealer had preferred an appeal before the Tribunal against the order of the Deputy Commissioner passed in revision whereby the Deputy Commissioner had held that the second unit of the petitioner required a separate registration.

6. In our opinion, issuance of demand notice under Section 40 of the Act read with Rule 33 of the Rules, should precede an order of assessment to be passed after grant of due opportunity to the dealer of participation in such assessment proceedings. This procedural requirement is part of the provisions of the Act mentioned above and also natural justice.

Consequently, the petition succeeds and is hereby allowed. The impugned notice at Annexure `E' and `F' and the consequent action of attachment of bank accounts of the petitioner are hereby quashed. We direct the assessing authority, respondent No.2 to issue notice of hearing to the petitioner for the alleged tax dues and after grant of opportunity of hearing, pass order of assessment in accordance with law. It will be open to the petitioner to raise all legal and factual contentions before the assessing officer. Rule is made absolute. There shall be no order as to costs.

(D.M.Dharmadhikari, C.J.)

(M.S. Shah,J.)

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